

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934 (48 Stat. 331; D.C. Official Code § 25-211(b) (2012 Repl.) and § 25-830(f) (2014 Supp.)), hereby gives notice of its intent to adopt the following proposed rules that would amend chapter 8 of title 23 of the DCMR to add a new section 808 for the computation of a licensee's violation history when assessing a penalty for an adjudicated violation, and would amend chapter 1 by adding relevant definitions to Section 199 of that chapter.

Specifically, the proposed rules establish a methodology for computing prior violations under the graduated penalty scheme set forth in D.C. Official Code § 25-830 and chapter 8 of title 23 of the DCMR. These proposed rules also add several definitions to chapter 1 in order to make clear the terms used in the computation methodology.

These proposed rules were initially adopted by the Board on August 12, 2015, by a seven (7) to zero (0) vote.

Pursuant to D.C. Official Code § 25-211(b) (2012 Repl.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review. The Board also gives notice of its intent to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Section 199, DEFINITIONS, of Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, is amended by adding the following terms and phrases.

Date of Adjudication – The date a Board Order is issued in an enforcement action where there is a finding of liability; the date of payment of a fine resulting from a citation or a staff settlement; or the date of the Board's acceptance of an offer in compromise.

Review Period – The period of time immediately preceding the date of violation, as established by statute. Cases adjudicated during the review period are counted for purposes of computing a licensee's violation history.

Date of Violation – The date on which the infraction was committed, as listed on the relevant case report.

Instant Case – The case currently before the Board that is pending adjudication. The date of violation in the instant case controls the beginning point of the review period.

Offer in Compromise – A negotiation between the Government and the Respondent to

settle the charges brought by the Government for those violations committed by the Respondent in the instant case.

Staff Settlement- An agreement offered by ABRA to the Respondent to voluntarily resolve a violation in order for the Respondent to avoid further legal action.

Prior Adjudication – Violations that have been adjudicated and can therefore be counted for purposes of computing violation history.

Violation - An infraction or breach of the law or regulation.

Violation History- The number of primary and secondary tier adjudications that were finalized during the relevant review period.

A new section, VIOLATION HISTORY COMPUTATION, is added to CHAPTER 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES of Title 23, ALCOHOLIC BEVERAGES, of the DCMR to read as follows:

808. VIOLATION HISTORY COMPUTATION

- 808.1 This section applies to all instances that require a computation of a person's or licensee's violation history, including, but not limited to, D.C. Official Code §§ 25-781, 25-783, and 25-830.
- 808.2 The review period for computing the number of a licensee's prior primary and secondary tier violations commences on the date of violation in the instant case, and runs backward for the number of years specified in §§ 808.6, 808.7, and 808.8, as applicable.
- 808.3 The computation of violation history shall only include prior adjudicated cases whose dates of adjudication fall within the applicable review period for the instant case.
- 808.4 The date of adjudication for computation purposes shall be the date:
- (1) the citation was paid;
 - (2) a final written order finding liability has been issued by the Board;
 - (3) a staff settlement was paid; or
 - (4) the date an offer-in compromise was accepted by the Board.
- 808.5 The computation shall not include:
- (1) any violation that has not been adjudicated as of the date of the violation in the instant case;
 - (2) any adjudicated case whose date of adjudication falls outside of the review

period.

- 808.6 A licensee shall be found liable for a second primary or secondary tier violation, whichever is applicable, if one prior violation of the same tier was adjudicated within two years of the date of violation in the instant case.
- 808.7 Except as specified in D.C. Official Code § 25-781 and § 25-783, a licensee shall be found liable for a third primary or secondary tier violation, whichever is applicable, if two prior violations of the same tier were adjudicated within three years of the date of violation in the instant case.
- 808.8 Except as otherwise specified in D.C. Official Code § 25-781 and § 25-783, a licensee shall be found liable for a fourth primary or secondary tier violation, whichever is applicable, if three prior violations of the same tier were adjudicated within four years of the date of violation in the instant case.
- 808.9 Any licensee who is found liable for a fourth secondary tier violation within four years shall, pursuant to D.C. Official Code § 25-830(d):
- (1) be deemed to have committed a first primary tier violation;
 - (2) be subject to penalty and fine schedule for primary tier violations for five years from the date of the violation in the instant case, during which time each subsequent secondary tier violation shall be deemed a subsequent primary tier violation for all purposes.
- 808.10 Except as otherwise specified in D.C. Official Code § 25-781 and § 25-783, a licensee shall be found liable for a fifth primary tier violation if four prior primary tier violations were adjudicated within four years of the date of violation in the instant case.
- 808.11 Subsections 808.6, 808.7, and 808.8 do not apply to violations of D.C. Official Code § 25-781 and § 25-783, which establish the penalties for a single violation of either statute and establish graduated penalties for multiple violations of either statute. All other provisions of this subsection apply to § 25-781 and § 25-783.
- 808.12 Each date upon which a violation is committed shall constitute a separate violation.
- 808.13 When a violation requires multiple instances, a continuous course of conduct, or other ongoing acts to sustain a charge, the date of the violation shall be the last date on which any act related to the violation occurred.
- 808.14 If multiple secondary tier violations are committed on the same date, they will be counted as one violation for purposes of computing a licensee's violation history.
- 808.15 If primary and secondary tier violations are committed on the same date, they

will be adjudicated separately; a licensee may be found liable for primary and secondary tier violations committed on the same date, and for multiple primary tier violations committed on the same date.

808.16 If the Board suspends a Respondent's license but stays the suspension:

- (1) The stay shall commence on the date of adjudication and conclude on the one-year anniversary of that date;
- (2) The stay shall be revoked and the suspension imposed upon adjudication of any subsequent violation within the stay period.

808.17 Written warnings, either issued by the Board or by citation, are not counted as violations for computation purposes.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.